IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.930 OF 2005
WITH
CIVIL APPLICATION NO.1092 OF 2005

Harash Saigal ..Appellant.
Vs.
Municipal Corporation of Greater Mumbai & anr. .. Respondents.

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Mr. Rishabha Shah with Mr. T.R. Yadav with Ms. Seema Chopda for the Appellant.
Mr. N.V. Walawalkar with Ms. Geeta Joglekar for Respondent Nos.1 and 2.

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CORAM : DR.D.Y.CHANDRACHUD, J.

16th November, 2005.

P.C. :

1. The work of repair that the Appellant, the Original Plaintiff has sought to carry out is described in paragraph 4 of the Plaint as follows :

a) changing of floor tiles;

b) repairing and replacing the drainage pipes and plumbing material;

c) replacing the old electrical connections and wiring;

d) replastering the entire walls from inside and

e) putting wooden partitions inside the premises without

demolishing any walls .

Under Section 342 of the Mumbai Municipal Corporation Act, 1888, the permission of the Municipal Commissioner is required to make any addition to a building or to change the existing user or to make any alteration or repairs to a building including removal, alteration or re-erection of any part of the building except tenantable repairs. The explanation to Section 342 provides an exhaustive definition of what constitute tenantable repairs. There is no dispute between counsel for the Appellant and for the Municipal Corporation that the items referred to in clauses (a) to (d) herein above do constitute tenantable repairs for which no permission is required. Item (e) however, does not fall within the purview of tenantable repairs and permission of the Municipal Corporation is necessary. One of the items of repair that was also sought to be carried out was the reinstatement of external walls and for which a letter was addressed to the Deputy Municipal Commissioner on 7th May, 2004. The Municipal Corporation on 15th May, 2004 informed the Appellant that it was reported that the Appellant was running a restaurant in the compulsory open space of the building which had not been approved by the Corporation. Consequently, the

Appellant was directed to produce authentic documents and to arrange for a joint inspection without which no further work should be carried out. The grievance of the Municipal Corporation is that after the order of status quo that was passed by the City Civil Court, work was unauthorizedly carried out by the Appellant.

2. It is not necessary for this Court to take a view on the controversy in view of the course of action which has been agreed upon by the Appellant and to which counsel appearing for the Municipal Corporation has no objection. The Appellant has through his counsel tendered an undertaking to the effect that save and except for items of tenantable repairs mentioned in clauses (a) to (d) in paragraph 4 of the Plaint (reproduced in the earlier part of this order), the Appellant shall remove all the other work which has been carried out within a period of one week from today and restore the premises to the condition immediately prior to the carrying out of the said work. Counsel appearing for the Municipal Corporation has drawn the attention of the Court to the photograph annexed at Exh.1 to the affidavit dated 27th October, 2005 filed by the Constituted Attorney of the Appellant (page 81 of the paper book). The undertaking as tendered is accepted. After

the Appellant removes the work which was unauthorizedly carried out and restores the possession of the premises in terms of the aforesaid undertaking, it would be open to the Appellant to apply to the Municipal Corporation for carrying out such work of addition, alteration or repair within a period of one week thereafter. The application shall have to be filed before the Executive Engineer (Building Proposals) of the concerned ward. The Executive Engineer (Building Proposals) shall upon receipt of the application take necessary steps in accordance with law to deal with and dispose of the application within a period of four weeks thereafter. The Appellant has undertaken before the Court that no work shall be unauthorizedly carried out and any work that is carried out after the receipt of the permission, if any, shall be in accordance with the terms of the permission. The undertaking of the Appellant incorporating the terms of the oral undertaking tendered through the counsel as aforesaid shall be filed on the record of this Court within a period of one week from today with a copy to counsel appearing for the Corporation. The Appeal from Order is disposed of. No other point is pressed.

Civil Application 1092 of 2005 does not survive in view of the

order passed in the Appeal from Order and is accordingly disposed of.